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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-275

Avery S. Adkins, et al,

Petitioners,

v.

Clarke W. Adickes, II, et al,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

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Counsel for the petitioners, Avery S. Adkins, et al, petition for a Writ of Certiorari to review the judgment of the Supreme Court of South Carolina entered in this case on May 28, 1975.

OPINION BELOW

The opinion of the Supreme Court of South Carolina is appended hereto as Appendix "A".

CONSTITUTIONAL PROVISIONS

United States Constitution, Articles of Amendment I provides in part "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The United States Constitution, Articles of Amendment XIV provides in part "...Nor shall any state deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within its jurisdiction the equal protection of the laws."

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered on May 28,

1975, and appears as Appendix "A" hereto. The petitioners invoke the jurisdiction of this court under 28 USC §2101(c).

STATEMENT OF CASE

This action was commenced by service of summons, complaint and rule to show cause on February 4, 1974. The rule to show cause required, among other things, the petitioners to show cause, if any they could, why they should not be required to vacate and surrender possession of the real property of First Presbyterian Church of Rock Hill to the respondents pending a determination of the matter on its merits. The defendants filed a demurrer and an answer. The fifth defense of that answer (Tr. 22) alleged:

> "That the Constitutions of the United States and of the State of South Carolina guaranteed to churches and to corporations the right to be governed by the majority and/or

pursuant to a charter and by-laws properly adopted, which procedure was followed in this instance; and which guarantee includes property ownership."

Amendments to the answer were subsequently filed by petitioners' counsel. The fifthteenth defense (Tr. 30) provides:

"That plaintiffs are not entitled to any relief in that an award of property to the plaintiffs under the theory of an implied trust enforces an alien polity upon a church which is congregational in its temporal affairs and any such award of property would be discriminatory and violate the First and Fourteenth Amendments of the Constitution of the United States of America because it would impose the doctrine of discipline of an hierarchical church upon a non-hierarchical church."

The sixteenth defense (Tr.30) provided:

"That plaintiffs' claims are grounded upon the contention that the Presbyterian Church in the United States is connectional in its polity which is in error for the Presbyterian Church in the United States is congregational in its polity in such secular matters as the local control and ownership of church property;

> that the secular evidences of title establish indicia of ownership in the First Presbyterian Church of Rock Hill, South Carolina, a South Carolina corporation; that an award of corporate church property to the plaintiffs would be in derrogation of the neutral principles of law, violate the First and Fourteenth Amendments to the Constitution of the United States of America and convert the Presbyterian Church in the United States into a church of connectional polity in matters secular."

The rule to show cause was heard on February 26, 1974. A consent order was issued on March 6, 1974 which, in essence, maintained a status quo until the matter could be heard on its merits. On April 9, 1974, a second hearing was held at which time testimony was taken and full and complete arguments were presented to the trial judge. On May 29, 1974, an order was issued requiring that the petitioners cease using the name of First Presbyterian Church of Rock Hill, that

they cease their use and possession of the real and personal property of such church, and that they were enjoined from interfering with the use and possession of such real and personal property of the First Presbyterian Church of Rock Hill by the respondents pending a final determination in the matter. Due and timely notice of intention to appeal from this order was served on counsel for the respondents on June 11, 1974.

On June 13, 1974, pursuant to an ex parte petition of the petitioners, the Honorable C. Bruce Littlejohn, Associate Justice of the Supreme Court of South Carolina, issued a rule to show cause and order supersedeas which was heard on June 21, 1974. On June 25, 1974, Justice Littlejohn issued his order vacating his prior order supersedeas.

On appeal, the fourteenth exception (Tr.217) raised by the petitioners provided:

> "That the court erred in finding and holding that the plaintiffs are entitled to the property in dispute, the error being that such finding and holding gives a religious body, i.e., Bethel Presbytery and the Presbyterian Church in the United States, the power to give the minority members of a South Carolina corporation power to control said corporation and its property to the exclusion of the majority which contravenes the establishment clauses and due process clauses of the United States Constitution and South Carolina Constitution as revised."

The eighthteenth exception on appeal (Tr.219) provided:

> "That the court erred in failing to find and hold that the corporate entity, represented by the defendants, is entitled to the possession and control of the property in dispute, the error being that the defendants are the majority of the members of the First Presbyterian Church of Rock Hill, a South Carolina corporation, and such finding and hold-

ing has the effect of establishing, sponsoring, advancing or rendering financial support to a religious organization, i.e., Bethel Presbytery and the Presbyterian Church in the United States, on the part of the court and state government and contravenes the First Amendment of the United States Constitution and Article I, Section II, of the South Carolina Constitution, as revised."

Exception twenty-two on appeal (Tr. 220) provided:

"That the court erred in finding and holding that the plaintiffs are entitled to the possession and control of the property in dispute, the error being that the court should have utilized 'neutral principles of law' when determining church property disputes and applying such 'neutral principles of law' to the evidence conclusively establishes that the defendants are entitled to the possession and control of the property in dispute."

Exception twenty-three on appeal (Tr. 220) provided:

"That the court erred in finding and holding that the plaintiffs are entitled to the possession and control of the property in dispute, the error being that the defendants are the majority of the members of the First Presbyterian Church of Rock Hill, a South Carolina corporation, which is the fee simple and record owner of the property in dispute, and such finding and holding is a taking of the property rights of the defendants without due process of law in violation of the due process clauses of the United States and South Carolina Constitutions."

The Supreme Court of South Carolina overruled all the petitioners' exceptions and affirmed the order of the lower court. This decision appears as Appendix "A" hereto, having the citation of 215 S.E.2d 442 (S.C. 1975). The petitioners seek a writ of certiorari from this court for a review of that decision.

STATEMENT OF FACTS

In 1916 the First Presbyterian Church

of Rock Hill, a South Carolina eleemosynary corporation, was chartered (Tr. 126). The purpose of this corporation stated in the charter is "to advance the spiritual interests of its members and to promote the spread of the gospel of Jesus Christ". The charter makes no reference to the Presbyterian Church in the United States, hereinafter referred to as the PCUS, or to Bethel Presbytery. The real property subject to this action was conveyed to the First Presbyterian Church of Rock Hill, an eleemosynary corporation, by deed dated December 30, 1954 (Tr. 131134). This deed appears as Appendix "B" herein. The corporation adopted bylaws on March 4, 1956 specifically providing for the method of property transfer (Tr. 122-125). These by-laws appear as Appendix "C" herein. The Constitution of the PCUS is known as the

Book of Church Order. Chapter 6 of the Book of Church Order (Tr. 165-166), appearing as Appendix "D" herein, provides that ownership and control of local church property is in the local church. The Constitution of the PCUS contains no provision against the withdrawal of a member church.

Long before the institution of this suit the corporation has sold and leased real property without any approval being sought or obtained from Bethel Presbytery or the PCUS. A majority vote of the congregation was the only authority sought for the sale or lease of real property.

Since its formation in 1861, the PCUS has been congregational in its temporal polity and hierarchical in its ecclesiastical polity. In 1949 and in 1951 attempts were made to amend the Constitution of the PCUS so as to pro-

vide that no congregation would have power, without permission of its Presbytery, to sell, mortgage, or in anywise alienate property to which it held title and on which regular public worship was conducted. Those attempts were rejected on the grounds that it would interfere with traditional automony enjoyed by congregations in matters of property. (Tr. 78, 80).

During the 1974 General Assembly of the PCUS an unsuccessful attempt was made to amend Section 6-3 of the Book of Church Order by adding after the wording, "otherwise ceases to exist," the words "as a part of the Presbyterian Church in the United States." See Appendix "E" herein. Had this amendment passed, withdrawing churches would lose their property and the PCUS would have become connectional in property matters.

The First Presbyterian Church of Rock Hill, an eleemosynary corporation, by resolution adopted on July 1, 1973, severed itself and its properties from Bethel Presbytery and the PCUS, said resolution being adopted at a congregational meeting by a vote of 295 in favor of the resolution and 87 against it. The petitioners represent the majority of the congregation who voted in favor of this resolution.

ISSUES PRESENTED

I. Do the First and Fourteenth Amendments of the United States Constitution, and the application to the evidence of "neutral principles of law", require that the church property in question be in the possession and control of the petitioners as representing the majority of the members of the First

Presbyterian Church of Rock Hill, a South Carolina eleemosynary corporation?

II. Can a religious organization, which has no proprietary interest in and no title to property of a state eleemosynary corporation, control that property without violating the First and Fourteenth Amendments of the United States Constitution?

REASONS FOR GRANTING THE WRIT

I. THE SUPREME COURT OF SOUTH CAROLINA HAS DECIDED A FEDERAL QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

In Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed. 2d 658, 89 S.Ct. 601 (1969) a church property dispute was involved and the Court stated:

> "Civil Courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And

there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes. Abington v. Schempp, 374 U.S. 204 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."

The Blue Hull case set forth the doctrine of neutral principles of law

although it did not provide a list of those neutral principles.

In Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 249 Md. 650, 241 A.2d 691 (1968) vacated, 393 U.S. 528, 21 L.Ed.2d 750, 89 S.Ct. 850, reaffirmed on remand, 254 Md. 162, 254 A.2d 162, app. dismd, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499, it was recognized that churches could have have a hierarchical or presbyterial ecclesiastical polity and a congregational property or temporal polity. And if the constitution of the parent body is not inconsistent with the provisions of the charter and by-laws of the local congregation providing for the control by the local congregation over its property, a minority of the congregation, although recognized as the "congregation" by the parent body, is

not entitled to the property of the local congregation and to control the local corporation. The Maryland & Virginia Eldership case is an excellent example of the application of "neutral principles of law" espoused in the Blue Hull case. The list of the neutral principles of law included:

(1) an examination of state statutes regarding the holding of property by religious corporations applicable to all religious corporations without regard to doctrine;

(2) an examination of specific statutes pertaining to certain denominations;

(3) an examination of deeds for reversion clauses upon withdrawal of a member church or departure from doctrine;

(4) an examination of the language of the corporation charter of the local

church and language in the by-laws;

(5) an examination of the constitution of the parent body for provisions relating to ownership and control of local church property and provisions for forfeiture of property upon withdrawal of a member church.

Applying these "neutral principles of law" to the evidence, it is conclusively established that the petitioners are entitled to possession and control of the property in question:

(1) South Carolina has no statutes which deal with the holding of property by religious corporations or churches except for the statutes relating to eleemosynary corporations. The powers granted to such corporations are provided in §12-758 of the South Carolina Code of Laws for 1962, as amended, and appearing herein as Appendix "F". This statute

allows such corporations to make contracts and borrow money in such respects as individuals now enjoy; to borrow money, to make notes, bonds or other evidences of debts and to secure the payment of its obligations by mortgage on all or any of its property both real and personal; to expel or suspend members or associates; to hold, purchase, lease, mortgage or otherwise dispose of and convey such real and personal estate as is limited by its charter or, if not so limited, such an amount as the business of the corporation requires; to appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties and fix their compensations; and to make by-laws not inconsistent with any existing law for the management of its property or the regulation of its affairs. See Appendix "F". This statute clearly

gives the corporation power to do what it desires with its property.

(2) South Carolina has no specific statutes pertaining to certain denominations.

(3) An examination of the deed appearing herein as Appendix "B" clearly establishes that there does not exist any reversion clauses upon withdrawal of the First Presbyterian Church of Rock Hill, an eleemosynary corporation, from the PCUS or for departure from doctrine. The deed is unequivocal. It contained no reversion clause or any clause restricting or affecting title to the property upon withdrawal from the PCUS or from Bethel Presbytery. There are no words which would give the slightest indication of the existence of a trust. No intention of a trust was expressed. If the PCUS had any right to or wanted to

maintain control over the property in question it could have easily done so by requiring a reverter clause in the deed in the event of withdrawal.

(4) An examination of the language in the corporate charter of the First Presbyterian Church of Rock Hill, an eleemosynary corporation, and the language contained in its by-laws gives absolutely no indication of any power on the part of the PCUS and Bethel Presbytery to maintain control over the property in question. The corporate charter provides that the "purpose of the said proposed corporation is to advance the spiritual interests of its members and to promote the spread of the gospel of Jesus Christ". (Tr. 126). Nowhere in this charter is Bethel Presbytery or the PCUS mentioned, and it is evident that it was never contemplated that the

property in question should be subject to the control of the Bethel Presbytery or the PCUS.

The by-laws adopted by the corporation on March 4, 1956 and appearing herein as Appendix "C" clearly express the intent that legal and beneficial title to church property be vested in the corporation by Article III thereof which provides:

> "Section 1. The title to all real estate belonging to the Church shall be vested in the corporate entity under the corporate name. The procedures heretofore in force, as indicated by the charter, under which the Session and the Board of Deacons of the Church were constituted Trustees of its property, somewhat as in case of an unincorporated Church, have been superceded, and the property has been conveyed by the Trustees to the corporate entity.
>
> Section 2. No real estate belonging to the Church may be transferred, mortgaged or encumbered except upon prior authorization by the congregation of the Church, granted at a meeting held after not less than two weeks

advance notice of the time, place and purpose of such meeting, which notice shall be given by announcement from the pulpit and in the printed church bulletin on each Sunday during the required notice period. Any action taken by the congregation shall be final and conclusive, without reference to any other group or body or any other Church or Church organization or person.

Section 3. Upon proper authorization by the congregation as required by this Article, the necessary instruments to accomplish transfer of title or the mortgaging or encumbering of any Church property shall be executed by the Chairman and Secretary of the Board of Deacons of the Church, for and on its behalf and in its name; and when so executed pursuant to such authorization such instruments shall be fully binding upon the Church.

Section 4. The use of Church real estate and other property shall be exclusively regulated and controlled by the Board of Deacons, subject however to the superior right of the Session or the Congregation to modify or rescind any action taken by the Board of Deacons.

> Section 5. Title to and ownership and control of all Church real estate and other property may be effectively transferred, mortgaged, encumbered or regulated only by the means provided in this Article, which shall constitute the exclusive means for regulation of such matters, and no authority other than by such means shall in any event be required for any such matters."

(5) An examination of the Constitution of the PCUS reveals that ownership and control of local church property is in the local church. See Book of Church Order, Chapter 6, appearing as Appendix "D" herein. This Constitution contains no prohibition against the withdrawal of a member church, and said constitution contains no provision for the forfeiture of property when an existing member church withdraws. Attempts by the PCUS to obtain this control over property were made in 1949 and 1951 but they were unsuccessful (Tr. 78, 80, 179-180). An additional

attempt was made to give the PCUS this power in 1974, but it too was unsuccessful. See Appendix "E". In this regard the Constitution of the PCUS should be compared with the Constitution of the United Presbyterian Church in the United States of America (Northern Church) which provides for definite limitations on the transfer of property by requiring the consent of Presbytery prior thereto. See ¶12 of §62 thereof appearing as Appendix "G". The PCUS Constitution contains no such provision. In the Maryland & Virginia Eldership case, supra, the court noted that the parent body constitution had no prohibition against withdrawal of the local church and no provision for loss or forfeiture of property by a local congregation if it withdrew from the parent body, and held that the local congregations, which were incorporated, were

entitled to the church property and to the control of the corporations. The court stated: "...a denomination may provide in its constitution for a prohibition against withdrawal and for a forfeiture of local church property in the event of withdrawal, but neither eldership in the present case made any such provision..." 254 A.2d 162, 168. The PCUS has made no provision in its constitution for any control over local church property.

There are other neutral principles of law which establish that the PCUS has no control over this property. Neither the PCUS nor Bethel Presbytery contributed financially towards the acquisition, maintenance or debt service of any of the property in question. Fee simple title to the property in dispute was taken by the corporation without any restrictions, reservations or limitations.

Applying these "neutral principles of law" to the evidence in this case, it is clear, just as it was in the Maryland & Virginia Eldership case, supra, that the property in question belongs to the petitioners. The following language in Maryland & Virginia Eldership is significant:

> "Nor, in our opinion, does the local property follow 'as an incident' of the power of the Eldership to appoint clergymen for a local congregation. As we observed, the denomination in its Constitution may so provide, but in the absence of such a provision there is no "contract" between the local church corporation and the parent body, which changes the provisions of the deeds and charters of the local church corporations giving the local church corporation complete legal title, possession and the right to convey or use the local property as the local church corporation deems best. When the local church corporation, pursuant to a valid vote of the trustees and members in the exercise of their religious freedom, decided to separate from the Eldership and become

> an autonomous religious body, the Eldership-absent a contract or constitutional provision to the contrary-could not, as we have already indicated, obtain the assistance of a State equity court to impose its notions of proper religious doctrine and discipline upon the separated church, cause a forfeiture of the local church property to the Eldership or interfere with the dominion and control of the local church corporation over its property." 254 A.2d 162, 170.

In 1952 the General Assembly of the PCUS approved a form known as a "Donation Contract" which was authorized for the purpose of protecting money which would be given to local congregations by the Board of Home Missions or later the Board of Church Extension. It specified that in the event of any occurrence which would be contrary to the normal obligation implied in the contract the PCUS would be reimbursed for money loaned or given to a local congregation. The specific issue was the possibility that the church might

terminate its association with the Presbytery and the PCUS in which case it would be specified in the contract that the PCUS would be reimbursed for the amount given. (Tr. 86). The form of this donation contract appears herein as Appendix "H". The form of these donation contracts acknowledges the right of member churches to control their own property and take it with them when they "cease to be connected with the Presbyterian Church in the United States."

It is indeed a paradox for the South Carolina Supreme Court to state that it has decided the present case utilizing neutral principles of law. For this case to be decided solely on the question of identity, it must be presumed that the PCUS is connectional in property matters. There was no evidence to support this contention. All the evidence

was conclusive that the PCUS is congregational and not connectional in property matters. It is submitted that utilization of neutral principles of law requires an examination of existing facts which the South Carolina Supreme Court has not done. It has arbitrarily decided that the PCUS is connectional in both ecclesiastical polity and secular polity, thereby disregarding the record in this case. This is where the paradox exists.

There are many cases which have dealt with church property disputes within the Northern Presbyterian Church (UPCUSA) where the question of identity is sufficient to decide who controls the property. However, these cases are not applicable to property disputes within the Southern Presbyterian Church (PCUS) since the Northern Presbyterian Church is connectional in both property matters and

ecclesiastical matters. See §62 ¶12 of its Constitution appearing as Appendix "G" herein. The Southern Presbyterian Church is not connectional in property matters.

The decision of the South Carolina Supreme Court has judicially deprived the petitioners of their property in violation of the First and Fourteenth Amendments of the United States Constitution. Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960).

II. THE SUPREME COURT OF SOUTH CAROLINA HAS DECIDED A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT.

The decision of the South Carolina Supreme Court gives a religious body, i.e, Bethel Presbytery and the PCUS, the power to give the minority members of a South Carolina eleemosynary corporation power to control said corporation and its

property to the exclusion of the majority. This decision has the effect of establishing, sponsoring, advancing, or rendering financial support to a religious organization, i.e., Bethel Presbytery and the PCUS on the part of the Court and State government. The court's decision further takes the property in question from the petitioners who represent the majority of the members of the First Presbyterian Church of Rock Hill, a South Carolina eleemosynary corporation, which is the fee simple and record owner of the property in dispute.

The establishment clause is intended to afford protection against sponsorship, financial support and active involvement of the government in religious activity. It prohibits the advancement or hindrance of a religion by the government, State or Federal. Abington v. Schempp, 374

U.S. 203, 83 S.Ct. 1560 (1963). Can a religious organization, which has no proprietary interests in and no title to property of a State eleemosynary corporation, control that property without violating the First and Fourteenth Amendments of the United States Constitution? A review of the cases of the United States Supreme Court by counsel for the petitioners has failed to discover any case which has answered this question. It is submitted that to allow an ecclesiastical body to determine the membership of a State eleemosynary corporation under such circumstances would advance that particular religion and hinder or deter another. A South Carolina eleemosynary corporation by statute has power to determine its own membership. It is a separate entity. The fact that the First Presbyterian Church of Rock Hill, an

eleemosynary corporation, became associated with the PCUS does not prevent it from remaining a separate, autonomous entity. The separation of church and state must be clear. The state cannot adjudicate church matters and churches cannot adjudicate state matters. The state cannot determine church membership and the church cannot determine state corporation membership. Citizens have a right not to have their religious freedom hindered by the state. They also have the right not to have their civil or secular freedom or rights hindered by the church.

To take the property away from the group represented by the petitioners "would deny to the members of the local congregation their freedom of religion and would in effect put the judicial power of the state behind the enforcement of the doctrine and discipline of the

[General Church, PCUS in this case] thus, in effect, "establishing" the religion promulgated by the [General Church, PCUS]. This we are forbidden to do." Maryland & Virginia Eldership v. Church of God, 254 A.2d 162, 170, 254 Md. 162, app. dismd., 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499.

The evidence is conclusive that the PCUS and the Bethel Presbytery have never held any interest in the property in question. The Bethel Presbytery and the PCUS have never contributed financially for the acquisition, maintenance, or debt service of the property in question. Neither the respondents nor Bethel Presbytery nor the PCUS nor their predecessors acquired legal title to the property in question. A disposition of the property in question was made prior to any act or attempted act on the part of

Bethel Presbytery or the PCUS. The corporate entity has at no time ceased to exist. The corporate entity has at all times exercised control over its properties. The corporate entity has selected its minister, controlled its membership, controlled its funds, controlled the use and possession of its properties, bought and sold properties, encumbered real properties, managed its real properties, controlled the objects of donation or contribution, adopted by-laws and incorporated under the laws of the State of South Carolina. The action of the South Carolina Supreme Court in bestowing upon the Bethel Presbytery or the PCUS the power to control the corporate property violates the rights guaranteed to the petitioners by the Due Process clause and the Establishment clause of the United States Constitution.

III. THE ISSUES PRESENTED BY THIS PETITION URGENTLY REQUIRE DECISION BY THIS COURT TO ASSURE UNIFORM NATIONWIDE APPLICATION OF FIRST AND FOURTEENTH AMENDMENT SAFEGUARDS TO LOCAL CHURCHES AND STATE ELEEMOSYNARY CORPORATIONS.

The widespread concern over control of local church property upon the withdrawal of a local church from the PCUS is manifested by the unsuccessful attempt in 1974 to change the Constitution of the PCUS to give the PCUS control of the property in such circumstances. See Appendix "E". The Elizabeth Blue Hull case, supra, which originated the "neutral principles of law" doctrine, and the Maryland & Virginia Eldership case, supra, which expounded upon that doctrine, have left unanswered questions which occur in many instances as to who controls local church property when a majority of its members decide to dissolve its relationship with a general church. In many cases the question of control of

local church property will determine whether a local church will dissolve the relationship with the general church. The problem of what a local church must do to protect its property under such circumstances is a serious and substantial one. Does a majority of a local church win the vote but lose the property? Who decides whether a particular church is connectional or congregational? Are deeds, by-laws, corporate charters, and church constitutions meaningless? What would prevent the general church from ousting all but one or two members of the local church yet still control local church property? If the vote to dissolve the relationship between the local church and the general church is ten thousand in favor of dissolution and two against dissolution, does the general church control the property even though it has

no proprietary interests in the property? A decision by this court on the issues presented by this petition would greatly clarify many questions which still exist when church property disputes arise.

CONCLUSION

For all the above reasons your petitioners pray that this Honorable Court grant this Writ of Certiorari directed to the Supreme Court of South Carolina and that this Honorable Court establish a briefing schedule towards the ultimate determination of this case.

Respectfully submitted,

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APPENDIX A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Clarke W. Adickes, II, et al,

Respondents.

V.

Avery S. Adkins, et al,

Appellants.

Appeal From York County
David W. Harwell, Judge

Opinion No. 20020
Filed May 28, 1975

AFFIRMED

Whaley, McCutchen & Blanton, of Columbia, for appellants.

Leatherwood, Walker, Todd & Mann, of Greenville, for respondents.

LITTLEJOHN, A. J.: Prior to July 1, 1973, the entire membership of the First Presbyterian Church of Rock Hill (an elee-

mosynary corporation), and the church itself, was an integral part of Bethel Presbytery and of the Presbyterian Church in the United States. On July 1, 1973, certain members of the congregation of the First Presbyterian Church of Rock Hill, being dissatisfied with the Presbyterian Church in the United States, proposed a resolution which was adopted by a vote of 295 in favor and 87 against. That resolution recited that the congregation wished to free itself of its present denominational affiliation and concluded by resolving "that it do withdraw from the Presbytery of Bethel and the Presbyterian Church in the United States and by so doing does sever itself and its properties from all relationship with said bodies."

On the same day the minister, who was among those voting with the majority, notified the Stated Clerk of the Bethel Presbytery that the First Presbyterian Church of Rock Hill had severed its relationship with Bethel Presbytery and the Presbyterian Church in the United States, and supplied the clerk with a copy of the resolution. Also, on the same day, the minister addressed another communication to the Stated Clerk of the Bethel Presbytery, notifying the clerk that he (the minister) had united with Calvary Presbytery. Calvary Presbytery is a part of the National Presbyterian Church and not the Presbyterian Church in the United States.

On July 7 a committee of members who remained loyal to the church (the 87) communicated with the Bethel Presbytery,

expressing their loyalty to the denomination and to the Presbytery. Subsequently, the Bethel Presbytery recognized the loyal group as the First Presbyterian Church of Rock Hill.

Thereafter, the Bethel Presbytery notified the majority group (the 295) that they no longer possessed any right or authority pertaining to the First Presbyterian Church of Rock Hill. The majority group was further directed to turn over to the Judicial Commission of the Bethel Presbytery all evidence of ownership of the church property, real and personal, along with the church files and records.

The plaintiffs allege that they are members and officers of the First Presbyterian Church of Rock Hill, and that they bring this action individually, as representatives of a class of all ruling elders, and for all the members of the First Presbyterian Church of Rock Hill who are loyal and remain subject to jurisdiction of Bethel Presbytery and the Presbyterian Church in the United States. The plaintiffs speak for the minority group.

The defendants are alleged to be representatives of a class of ruling elders, deacons and members of a group or organization purporting to be the First Presbyterian Church of Rock Hill. They are in essence the majority group, who approved the resolution referred to hereinabove, and who seceded.

The church as it existed prior to July 1, 1973, owned real estate and

personal property consisting, among other things, of funds in various banking institutions.

Since its inception First Presbyterian Church of Rock Hill has been a member church of the Presbyterian Church in the United States (a parent organization), and of the Bethel Presbytery (an organization of several local Presbyterian churches).

Plaintiffs ask that the Court hold (1) that the plaintiffs and the class which they represent, are, and do comprise, the First Presbyterian Church of Rock Hill, and (20 that they are entitled to full and exclusive possession of the real and personal property and investment accounts of such church, and (3) that the defendants, who have renounced all allegiance to the Bethel Presbytery and the Presbyterian Church in the United States, be required to vacate such property and be enjoined from disturbing the plaintiff's peaceful possession and the use of such property and funds.

The defendants admit that the purpose of the resolution of July 1, 1973 was to sever their connection with the Bethel Presbytery and the Presbyterian Church in the United States. It is their contention that they, being the majority, are entitled to take over and control the properties.

The basic question for the Court is: Which of these two competing groups comprises the First Presbyterian Church of Rock Hill?

The lower court ruled that the plaintiffs (the minority) were entitled to the relief they sought and to the properties. The defendants (the majority) have appealed.

The appellants have obviously appreciated the fact that the ruling they seek is contrary to our holding in the case of Bramlett v. Young, 229 S.C. 519, 93 S.E.(2d) 873 (1956). They have asked and have been granted, permission pursuant to §10 of Rule 8 of this Court to attack or argue against that case, thereby seeking a review, modification and overruling, or a distinction. After hearing argument of counsel and reviewing applicable authorities, we adhere to our ruling in Bramlett.

In Bramlett the same basic issue was before this Court. Therein we stated the question to be as follows:

> "When a congregation of the Presbyterian Church decides in a congregational meeting, duly called and held in the manner prescribed by the form of government of the Presbyterian Church, to withdraw from the Presbytery of which it is a member, and from the Presbyterian Church in the United States, are they entitled to keep the property of the church as against the claim of a minority group who did not vote to withdraw but remained loyal to such Presbyterian Church?"

In that case the McCarter Presbyterian Church, of the Enoree Presbytery, had a

membership of 67. The vote to withdraw was 38 to 2. The members remaining loyal were 11. This Court held:

> "When a division occurs in a church congregation, which is always unfortunate, the question as to which faction is entitled to the church property is answered by determing which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanctioned by the appropriate governing body of the denomination. It is a question of identity.
>
> " The appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church."

Counsel for appellants, in the first attack on the order of the lower court, has striven vigorously to distinguish this case from Bramlett by arguing that the Presbyterian Church in the United States is congregational and not connectional insofar as matters of property are involved. It is conceded that the Book of Church Order, which is the

controlling authority of the Presbyterian Church in the United States and, in turn, the Bethel Presbytery and the First Presbyterian Church of Rock Hill, has remained unchanged insofar as any distinction between this case and Bramlett which would warrant a different result. In Bramlett we discussed at length and cited many authorities controlling the cardinal issue involved in that case. The same result is required in the case at bar.

Counsel also argues the lower court should be reversed because "neutral principles of law" require that the property in question should be in the possession and control of the appellants as representing the majority of the members of the First Presbyterian Church of Rock Hill, an eleemosynary corporation. For this proposition appellants rely largely on the case of Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.(2d) 658, 89 S.Ct. 601 (1969). A review of that case convinces us that it is of no comfort to the appellants here and certainly it does not require a result contrary to Bramlett. By a determination of this case, this Court exercises no roll in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property. The second question raised by the appellants is without merit.

By the third question appellants submit that the order of the lower court violated

their rights guaranteed by the Establishment and Due Process clauses of the Constitutions of the United States and South Carolina. The appellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection, and when they did they forfeited any right to the use and possession of the property of that church under the long established law of the church and of South Carolina. Due process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church. There is nothing in the ruling of the lower court, nor in our ruling today, which establishes, sponsors, advances, or supports either the religious belief of the majority or the minority in this case. This Court has traditionally avoided any intrusion upon religious matters and has confined its rulings in such cases to identifying the faction which represents the church after a schism occurred. We have accepted the findings of the appropriate church judicatory as to the matter of identity. In so doing, we apply neutral principles of law referred to in Hull.

Appellants next contend that the respondents, and/or the Bethel Presbytery, and/or the Presbyterian Church in the United States, have waived any right to control the property in question, and are estopped from asserting control over said property. On these issues the appellants by asserting them, have assumed the burden of proof. The lower court was convinced that the burden of proof had not been carried. We cannot say that the finding of the lower court is not warranted by the record.

In their last question appellants assert that the lower court erred in failing to sustain the demurrer to the complaint. It is contended that the matter cannot be settled unless the eleemosynary corporation as such is made a party. It is argued that the Bethel Presbytery, the Synod of the Southeast, and the Presbyterian Church in the United States are necessary parties to the action. The argument overlooks the undisputed fact that neither of these have any property rights dispute with either the minority or the majority group. Concededly, the property belongs to the First Presbyterian Church of Rock Hill. That church, and the eleemosynary corppration in which title is vested, has no dispute with anyone. Not even the appellants argue that the property does not belong to the First Presbyterian Church of Rock Hill. The conflict is between the minority and the majority group solely on the question of identity.

The right of the minority to bring this action and to obtain relief cannot

be seriously contested in the light of our ruling on the same point in Bramlett.

AFFIRMED.

MOSS, C. J., LEWIS and NESS, JJ., concur. BUSSEY, A. J., concurs in result.

APPENDIX B

Preamble — Title to Real Estate

WHEREAS, the various tracts of real estate hereinafter described were conveyed to the Deacons and the Session of the Rock Hill Presbyterian Church, their successors and lawful assigns; and

WHEREAS, the First Presbyterian Church of Rock Hill, S. C., was duly incorporated as an eleemosynary corporation on January 8, 1916, the certificate of incorporation being duly recorded in Deed Book 44, Page 560 in the Office of the Clerk of Court for York County, S. C.; and

WHEREAS, the real estate hereinafter described has never been conveyed to the First Presbyterian Church of Rock Hill (an eleemosynary corporation); and

WHEREAS, a congregational meeting of the First Presbyterian Church of Rock Hill was held on the 24th day of October, 1954 at which time a resolution was unanimously adopted to place the legal title to all real estate owned by the Rock Hill Presbyterian Church in the eleemosynary corporation known as The First Presbyterian Church of Rock Hill.

KNOW ALL MEN BY THESE PRESENTS, That We, the Deacons and Elders of the First Presbyterian Church of Rock Hill, in the State aforesaid, for and in consideration of the premises above stated, to us paid by First Presbyterian Church of Rock Hill (an eleemosynary corporation) in the State

aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said First Presbyterian Church of Rock Hill (an eleemosynary corporation), its Successors and assigns:

1. All that certain tract of land located on East Main Street, City of Rock Hill, S. C., bounded by East Main Street, Saluda Street, East Black Street and lands belonging to W. J. Rawlinson and the City of Rock Hill, being the tract now occupied by the First Presbyterian Church and being the same tract described in Deed Book C-3, Page 789 and Deed Book 25, Page 691.

2. All that certain tract of land located on East Main Street, Rock Hill, S. C., bounded by East Main Street, Elizabeth Lane and property belonging to Mrs. Beulah Meridth and Mrs. Nan Roddey White and Arkansas Fuel Oil Company, being the same property described in the following Deeds duly recorded in the Office of the Clerk of Court for York County, S. C., and now occupied as the manse of the First Presbyterian Church of Rock Hill.

Deed Book G-8, Page 256, Deed Book 27, Page 310, Deed Book 64, Page 57, Deed Book 63, Page 261.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the

said First Presbyterian Church of Rock Hill (an eleemosynary corporation) its Successors and Assigns.

WITNESS our Hands and Seals this 30th day of December in the year of our Lord one thousand nine hundred and fifty-four and in the one hundred and seventy ninth year of the Sovereignty and Independence of the United States of America.

WITNESSED BY:

/s/ Henry Dockery Brown, Jr.
Moderator

Kathleen Houston
L. S. Dickert

William M. White, Clerk
C. H. Albright, Elder
Frank S. Barnes, Sr., Elder
Joe M. Beamguard, Elder
George H. Connolly, Elder
B. N. Craig, Jr., Elder
Robert S. DuRant, Elder
J. C. Hambright, Sr., Elder
J. Ed Marshall, Jr., Elder
T. A. Moore, Elder
J. P. Orr, Elder
James P. Poag, Elder
John B. Reid, Elder
Reid C. Roach, Elder
C. A. Robinson, Jr., Elder
R. M. Sadler, Elder
Frank S. Strait, Sr., Elder
James E. White, Elder
James S. White, Jr., Elder
T. V. Whiteside, Elder
Frank S. Barnes, Jr., Chairman
Board of Deacons

Fred A. Dunlap, Jr., Secretary
Board of Deacons
W. C. Davison, Deacon
W. A. Douglas, Jr., Deacon
Jack R. Hutcheson, Deacon
Martin Kee, Deacon
M. M. Pennell, Sr., Deacon
W. C. White, Deacon
John Barnes, Deacon
Albert Burns, Deacon
Dr. Frank Gaston, Deacon
R. Faye Good, Deacon
Louis E. Hayes, Deacon
T. W. Hutchinson, Deacon
L. S. Starnes, Deacon
Robert V. Butts, Deacon
Starnes Hayes, Deacon
Cecil Lee, Deacon
Jack O'Neal, Deacon
Coyt L. Pollock, Deacon
Rudolph P. Schultz, Deacon
W. B. Byers, Deacon
R. E. DeVore, Deacon
W. Carl Love, Deacon
John Mickle, Deacon
O. F. Moran, Deacon
David Sadler, Deacon
Joe Wise, Deacon

PERSONALLY APPEARED before me L. S. Dickert, who first being duly sworn, says he saw the foregoing named Officers, Elders and Deacons of the First Presbyterian Church, sign, seal and deliver the foregoing conveyance of real estate; and that he with Kathleen Houston, witnessed the execution thereof.

/s/L. S. Dickert

Sworn to before me this
3rd day of Oct., 1955.

/s/ James W. Getty
Notary Public for South Carolina

APPENDIX C

FIRST PRESBYTERIAN CHURCH
ROCK HILL, SOUTH CAROLINA

BY-LAWS

ARTICLE I

Establishment

Section 1. The First Presbyterian Church of Rock Hill, S. C., is an eleemosynary corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in the City of Rock Hill, York County, S. C. Said church was orginally established as an unincorporated association in the year 1858 and was therafter, upon proper application therefor, granted a charter by the Secretary of State of South Carolina on the 8th day of January, 1916.

Section 2. The purpose of the corporation is entirely religious and charitable and its doctrines are those of the Presbyterian Church in the United States.

ARTICLE II

Policies and Procedures

Section 1. The policies and procedures to be followed by the corporation in the conduct of its spiritual and business affairs shall be in accordance with the Book of Church Order of the Presbyterian Church in the United States.

Section 2. The requirements for quorum and voting at congregation meetings and the method of calling and holding such meetings shall be regulated in the same manner as prescribed in Section 1 of this Article.

Section 3. Matters not specifically covered by Section 1 of this Article shall be governed as elsewhere prescribed herein or by the congregation.

ARTICLE III

Church Real Estate

Section 1. The title to all real estate belonging to the Church shall be vested in the corporate entity under the corporate name. The procedures heretofore in force, as indicated by the charter, under which the Session and the Board of Deacons of the Church were constituted Trustees of its property, somewhat as in case of an unincorporated Church, have been superceded, and the property has been conveyed by the Trustees to the corporate entity.

Section 2. No real estate belonging to the Church may be transferred, mortgaged or encumbered except upon prior authorization by the congregation of the Church, granted at a meeting held after not less than two weeks advance notice of the time, place and purpose of such meeting, which notice shall be given by announcement from the pulpit and in the printed church bulletin on each Sunday during the required notice period. Any action taken by the congregation shall be final and conclusive, without reference

to any other group or body or any other Church or Church organization or person.

Section 3. Upon proper authorization by the congregation as required by this Article, the necessary instruments to accomplish transfer of title or the mortgaging or encumbering of any Church property shall be executed by the Chairman and Secretary of the Board of Deacons of the Church, for and on its behalf and in its name; and when so executed pursuant to such authorization such instruments shall be fully binding upon the Church.

Section 4. The use of Church real estate and other property shall be exclusively regulated and controlled by the Board of Deacons, subject however to the superior right of the Session or the Congregation to modify or rescind any action taken by the Board of Deacons.

Section 5. Title to and ownership and control of all Church real estate and other property may be effectively transferred, mortgaged, encumbered or regulated only by the means provided in this Article, which shall constitute the exclusive means for regulation of such matters, and no authority other than by such means shall in any event be required for any such matters.

ARTICLE IV

Business Year

Section 1. The Church shall operate and conduct its affairs on a calendar year basis for all purposes.

ARTICLE V

Section 1. These By-Laws may be amended at any meeting of the congregation at which a quorum is present held following notice given in the same manner as provided in Section 2 of Article III hereof.

CERTIFICATE

The foregoing By-Laws were duly adopted by the First Presbyterian Church of Rock Hill, S. C., at a congregational meeting held in accordance with the procedure prescribed in Article IV hereof on the 4th day of March, 1955, after due advance notice thereof as prescribed in Section 2 of Article III hereof; and the same are of full force and effect and fully binding in all respects.

APPENDIX D

EXCERPT FROM BOOK OF CHURCH ORDER FOR THE PRESBYTERIAN CHURCH IN THE UNITED STATES (PCUS)

§6-1. FOR AN UNINCORPORATED CHURCH

A particular church which is not incorporated, desiring to elect trustees, may select from among its membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church, to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees. The powers and duties of the Session or of the Board of

Deacons. Such trustees shall be elected in regularly constituted congregational meetings.

§6-2. FOR AN INCORPORATED CHURCH

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board

of Deacons. All funds collected for the support and expense of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of

the corporation, granted in a duly constituted meeting of the corporation.

§6-3. If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion.

APPENDIX E

OFFICE OF THE GENERAL ASSEMBLY

The Presbyterian Church in the United States
541 Ponce DeLeon Avenue, N. E.
Atlanta, Georgia 30308
(404) 875-8921

James L. Andrews, Stated Clerk
Donald H. Speck, Associate Stated Clerk
Mrs. A. M. Park, Administrative
Assistant to the Stated Clerk

November 19, 1974

Mr. Jeter E. Rhodes, Jr.
Whaley, McCutchen & Blanton
P. O. Drawer 11,268
Columbia, South Carolina 29211

Dear Mr. Rhodes:

The printed Minutes of the General Assembly do not record main motions which are lost. I have realized for about six months that this is contrary to normal parliamentary procedure, which calls for the recording of the action on all main motions, but we have not followed that standard procedure even though Roberts Rules of Order, newly revised, is our parliamentary standard.

The recommendation of the Permanent Judicial Commission that Section 6-3 BCO be amended by the additon of the phrase

"as a part of the Presbyterian Church, U.S." after the wording "otherwise ceases to exist" was recommended to the Assembly by the Standing Committee on Polity. The recommendation was denied by the Assembly, and therefore the language does not appear on the record of the Assembly's actions.

Sincerely,

James E. Andrews

JEA:lh

APPENDIX F

EXCERPT FROM TITLE 12, SOUTH CAROLINA CODE OF LAWS

§12-758. Powers of corporation.

Every corporation chartered under this chapter shall have the following powers:

(1) To make contracts and to loan money, under such regulations as may be fixed in the bylaws of the said corporation, possessing the same powers in such respects as individuals now enjoy;

(2) To borrow money for the purpose of carrying out the objects of its charter, to make notes, bonds or other evidences of debt and to secure the payment of its obligations by mortgage or deed of trust on all or any of its property and franchises, both real and personal;

(3) To expel or suspend members or associates;

(4) To enforce the collection of dues and charges under such penalties as may be provided in the bylaws;

(5) To have succession, by its corporate name, for the period limited in its charter and, when no period is limited, in perpetuity;

(6) To sue and be sued;

(7) To use a common seal and to alter the same at pleasure;

(8) To hold, purchase, lease, mortgage or otherwise dispose of and convey such real and personal estate as is limited by its charter or, if not so limited, such an amount as the business of the corporation requires;

(9) To appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties and fix their compensation; and

(10) To make bylaws not inconsistent with any existing law for the management of its property or the regulation of its affairs.

APPENDIX G

EXCERPT FROM CONSTITUTION OF UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (NORTHERN CHURCH)

62.12 A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

APPENDIX H

DONATION CONTRACT

"...The.....Presbyterian Church, pursuant to the action of the General Assembly at its 1952 Session, does hereby agree and hold itself firmly bound unto the Presbytery of.....in the Synod of .....that in case the said..... Presbyterian Church shall cease to be connected with the Presbyterian Church in the United States, or the property, for the purchase or improvement of which said grant is made, be alienated or abandoned as a place or worship, or a manse, except for the building of a better house of worship, or manse, the.....Presbyterian Church will repay the amount of said grant to the Church Extension Committee (or Home Mission Committee) of the Presbytery of.....within a period of sixty days from the date said Church shall cease to

be connected with the Presbyterian Church in the United States, or within sixty days from the date the said property is alienated or abandoned as a place of worship, or a manse, except for the building of a better house of worship or manse, provided, that the amount of such repayment shall be limited to the amount of the net proceeds realized upon the sale or disposition of said property upon any alienation."

CERTIFICATE OF MAILING

In accordance with Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 22ND day of August, 1975, filed the required copies of the Petition for Writ of Certiorari in the Clerk's Office and have mailed the required copies of the Petition for Writ of Certiorari to J. D. Todd, Jr., Esquire, of Leatherwood, Walker, Todd & Mann, P. O. Box 2248, 217 East Coffee Street, Greenville, South Carolina 29602.

Thomas E. McCutchen

Thomas E. McCutchen

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-275

AVERY S. ADKINS, *et al*,

Petitioners,

versus

CLARKE W. ADICKES, II, *et al*,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF FACTS

In general the Respondents do not object to the Petitioners' statement of case and statement of facts. The Respondents however must take issue with respect to two specific statements made by the Petitioners.

The Petitioners state on page 11 of their petition that "the Constitution of the PCUS contains no provision against the withdrawal of a member church." This is not an accurate

appraisal of the Constitution of the Presbyterian Church in the United States PCUS. The Book of Church Order (BOCO), section 16-7 states that "The Presbytery has power: . . . (7) To organize new churches. (8) To receive and dismiss churches. (9) To dissolve churches. (10) To control the location of new churches and of churches desiring to move to new locations . . ." See page 173 of the Transcript of Record in the Court below, folios 689-690.

On page 13 of their petition, the Petitioners state that "The First Presbyterian Church of Rock Hill, an eleemosynary corporation, by resolution adopted on July 1, 1973, severed itself and its properties from Bethel Presbytery and the PCUS, . . ." This the First Presbyterian Church of Rock Hill could not unilaterally do. What Petitioners should have said was that the group represented by the Petitioners voluntarily severed themselves from the denomination and attempted to sever the relationship of the First Presbyterian Church of Rock Hill to the denomination.

ARGUMENT

Petitioners assert there are three reasons for granting certiorari. These are stated to be:

I. The Supreme Court of South Carolina has decided a federal question of substance in a way not in accord with the applicable decisions of this Court.

II. The Supreme Court of South Carolina has decided a federal question of substance not heretofore determined by this Court.

III. The issues presented by the petition urgently require decision by this Court to assure uniform nationwide application of First and Fourteenth Amendment safeguards to local churches and State eleemosynary corporations.

There is merit to none of these contentions.

I. HAS THE SUPREME COURT OF SOUTH CAROLINA DECIDED A FEDERAL QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT?

In the Opinion below which is reported at 215 S.E.2d 442, the Supreme Court of South Carolina stated, "The basic question for the Court is: Which of these two competing groups comprises the First Presbyterian Church of Rock Hill?" Page 43, Appendix A, of Petition.

In answering that question the Supreme Court of South Carolina relied upon its prior decision of *Bramlett, et al v. Young, et al*, 229 S.C. 519, 93 S.E.2d 873 (1956) and the concession "that the Book of Church Order, which is the controlling authority of the Presbyterian Church in the United States and, in turn, the Bethel Presbytery and the First Presbyterian Church of Rock Hill, has remained unchanged insofar as any distinction between this case and *Bramlett* which would warrant a different result." Pages 45-46, Appendix A, of Petition.

The First Presbyterian Church of Rock Hill had, since its inception, been a part of the Presbyterian Church in the United States and the Bethel Presbytery (one of the ascending judicatories of the Presbyterian Church in the United States). Page 43, Appendix A, of Petition. The Bethel Presbytery (the proper and appropriate judicatory of the denomination) recognized the respondents as constituting the First Presbyterian Church of Rock Hill. Page 42, Appendix A, of Petition.

The South Carolina Court then cited from *Bramlett* the following:

> When a division occurs in a church congregation, which is always unfortunate, the question as to which faction is entitled to the church property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanction-

> ed by the appropriate governing body of the denomination. It is a question of identity.
>
> The appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church. Page 45, Appendix A, of Petition.

And then stated, "The same result is required in the case at bar."

In other words, what the South Carolina Court did was to identify the respondents as The First Presbyterian Church of Rock Hill. In doing so it passed upon no questions of a theological or ecclesiastical nature. It inquired into no questions of doctrine or departure therefrom. The Supreme Court of South Carolina, contrary to some state courts, has a long history of such proper treatment of church disputes.

In *Bramlett* the Court said:

> We should keep in mind the authority of the civil courts to determine the issue here involved. In the case of *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821, 827, the authority of the civil courts, with reference to a church controversy, is fully outlined, as follows:
>
> 'The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority. On this principle,

> the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.'
>
> See also *Morris St. Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753.

Page 822 of 93 S.E.2d, Page 537 of 229 S.C.

This Court has decided seven important cases which delineate the proper course for state courts to follow in church disputes. These cases are *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872); *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1872); *Gonzalez v. Archbishop of Manila*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94 (1952); *Kreshik v. Russian Orthodox Church*, 363 U.S. 190 (1960); *Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); and *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970).

In *Watson* this Court was faced with the same issue which confronted the South Carolina Supreme Court in the instant case and in *Bramlett;* i.e., which of two factions of a Presbyterian Church split by a schism should have the church property, the one recognized as the church by the appropriate judicatory of the denomination, or the seceding group?

In holding for the group recognized by the General Assembly of the Presbyterian Church, this Court said:

> In this class of cases we think the rule of action which should govern the civil courts founded in a broad and sound view of the relations of church and state under our system of laws, . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. 80 U.S. at 727.

This Court clearly illuminated its reason for recognizing the conclusiveness of decisions of church judicatories in such matters when Mr. Justice Miller wrote at 80 U.S. 728 "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." Quoted with approval by Mr. Justice Brannan in *Presbyterian Church v. Hull, supra.*

The South Carolina Supreme Court closely followed *Watson* in both this case and *Bramlett.*

In *Bouldin* this Court applied the proper *Watson* rule to a church having a congregational policy.

In *Gonzalez v. Archbishop of Manila, supra,* this Court qualified the *Watson* rule of giving conclusive effect to the decisions of proper church tribunals by stating through Mr. Justice Brandeis:

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. 280 U.S. at 160.

No question of fraud, collusion or arbitrariness has been here raised, so there is no conflict with *Gonzalez.*

In *Kedroff v. St. Nicholas Cathedral, supra,* this Court held a statute of the State of New York, recognizing the autonomy and independence of Russian Orthodox churches which had declared their independence from the general church in Moscow, an unconstitutional invasion of the legislature into the government and control of the church in violation of the free exercise clause of the First Amendment.

Relying upon the *Watson* rule, Mr. Justice Reed stated:

> The opinion [of Watson v. Jones] radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference. . . . 344 U.S. at 116.

In *Kreshik v. Russian Orthodox Church, supra,* this Court held that the New York Courts could not do without the unconstitutional statute that which had been prohibited in *Kedroff.*

Nothing in this case or in *Bramlett* runs counter to either *Kedroff or Kreshik.* As a matter of fact, *Kedroff* is cited and followed in *Bramlett.* See page 887 of 93 S.E.2d.

In *Presbyterian Church v. Hull Memorial Presbyterian Church, supra* it was quite correctly and not surprisingly held that the Georgia Court had erred in basing a decision as to the ownership of church property on a jury's determination of an alleged departure from doctrine.

Mr. Justice Brennan, speaking for the Court, stated:

> The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpre-

tation and significance the civil court assigns to aspects of church doctrine. 393 U.S. at 441.

This Court answered that question by holding:

> The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role. *Id.* at 449-50.

In the instant case the Supreme Court of South Carolina neither violated nor ignored *Hull*. On the contrary, it held "a review of that case (*Hull*) convinces us that it is of no comfort to the appellants here and certainly it does not require a result contrary to *Bramlett*. By a determination of

this case, this Court exercises no role in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property." Page 46, Appendix A, of Petition.

Hull expressly recognizes the conclusiveness of the decision of the appropriate church tribunal, absent "fraud, collusion, or arbitrariness" when the matter finds its way into civil courts.

Hull requires "civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." 393 U.S. at 449.

That is exactly what the Supreme Court of South Carolina did in this case when it applied the *Watson* rule. Here the appropriate church tribunal, the Bethel Presbytery, had recognized the loyal minority (the respondents) as the First Presbyterian Church of Rock Hill. Constituting the First Presbyterian Church of Rock Hill, they (the respondents) were entitled to the use of that name and the control of the property of that church.

Rather than the decision of the Supreme Court of South Carolina being contrary to the applicable decisions of this Court, if followed them explicitly.

Petitioners rely heavily upon *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., supra.* To be more accurate, petitioners really rely upon the Opinion of the Court of Appeals of Maryland.

What this Court did there in a *per curiam* Opinion was to affirm the Maryland Court's resolution of a property dispute, on the basis that it involved no inquiry into religious doctrine prohibited by *Hull*, and thus involved no federal question. The same is true here for the Supreme Court of South Carolina scrupulously avoided entanglement in a thicket of theology, doctrine or ecclesiastical matters and thus no federal question is involved.

But petitioners would argue that the *Eldership* case requires the application of five, and only five, "neutral principles of law" for civil courts to decide church property questions.

These are said to be:

(1) An examination of state statutes regarding the holding of property by religious corporations;

(2) An examination of specific statutes pertaining to certain denominations;

(3) An examination of deeds for reversion clauses upon withdrawal of a member church or departure from doctrine;

(4) An examination of the corporation charter of the local church and its by-laws; and

(5) An examination of the constitution of the parent body for provisions relating to ownership of local church property and provisions for forfeiture of property upon withdrawal of a member church.

The source of these all inclusive "neutral principles of law" is not stated in the petition, but it certainly is neither the *per curiam* Opinion of this Court in the *Eldership* case nor the concurring Opinion of Mr. Justice Brennan, joined by Justices Douglas and Marshall.

The *per curiam* Opinion states:

> Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question. 396 U.S. at 368.

The same result is called for here.

In the concurring Opinion of Mr. Justice Brennan, he sets out three constitutionally permissible approaches for State courts to use in the resolution of church property disputes. These are said to be:

(1) The *Watson* rule;

(2) The application of "neutral principles" of property law such as study of deeds, reverter clauses and general state corporation law; and

(3) The passage of special statutes governing church property arrangements in such a manner as to preclude state interference in doctrine.

Mr. Justice Brennan in no way implies that these are the only approaches, nor does his Opinion state any preference among the approaches listed.

The Supreme Court of South Carolina adopted the *Watson* approach. It did this without resort to any inquiry into doctrine or theology.

In the *Maryland and Virginia Eldership* case, *supra*, in footnote 1, 396 U.S. at 369, Mr. Justice Brennan quotes from *Watson v. Jones, supra*, as follows:

> Under the *Watson* definition, *supra*, at 722-723. congregational polity exists when 'a religious congregation ***, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority." Hierarchical polity, on the other hand, exists when 'the religious congregation * * * is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.'

Obviously the Presbyterian Church in the United States has a hierarchical polity. As a matter of fact, this Court expressly said so in *Hull*, 393 U.S. at 441-42:

> Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches

governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body.

Under the *Watson* rule, the civil courts enforce the decision of the highest church tribunal that has ruled on the dispute at issue. Here that church tribunal was the Bethel Presbytery which recognized the respondents and the group they represent as the First Presbyterian Church of Rock Hill. See Page 42, Appendix A, of the petition.

Here the Supreme Court of South Carolina has decided no federal question of substance in a way not in accord with the decisions of this Court.

II. HAS THE SUPREME COURT OF SOUTH CAROLINA DECIDED A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT?

The Petitioners contend that the Presbyterian Church in the United States, through its hierarchical system of courts, is unlawfully exercising control over non-ecclesiastical matters involving the First Presbyterian Church of Rock Hill, a South Carolina eleemosynary corporation. The Petitioners are asserting that the Presbyterian Church in the United States has no interest in or connection with the First Presbyterian Church of Rock Hill with respect to non-ecclesiastical matters and that the membership of the corporation is entirely separate, independent and not a part of or subject to the Presbyterian connectional system of church government.

Such assertions are completely erroneous and misleading.

The corporate by-laws of the First Presbyterian Church of Rock Hill, which are a part of the record in this case, are

clear and unambiguous on this point. Page 55, Appendix C of Petition. Article I, Section 2 provides:

> The purpose of the corporation is entirely religious and chartable and its doctrines are those of the Presbyterian Church in the United States.

Article II, Section 1 states:

> The policies and procedures to be followed by the corporation in the conduct of its spiritual and business affairs shall be in accordance with the Book of Church Order of the Presbyterian Church in the United States.

Section 6-2 of the Book of Church Order (BOCO) Appendix D of Petition, page 60, provides that if a particular church is incorporated "the provisions of its charter and by-laws must always be in accord with the Constitution of the Presbyterian Church in the United States." (The Book of Church Order is a part of the Constitution of the Presbyterian Church in the United States. See Appendix to Respondents' brief, page 17.)

Section 6-2 further provides that the membership of the incorporated church is identical to the communing membership of the church congregation. In the Presbyterian form of government (which was expressly adopted by this corporation in its by-laws) the congregation is that body of persons recognized as members of the particular church (corporation) by the respective courts of the church.

Thus where there is a division and two different groups contend that each represents the membership of the church (the corporation) it is a question of identity. The South Carolina Supreme Court clearly and correctly resolved this question by examining the corporate by-laws and constitution which is a proper application of neutral principles of law in accord with the decisions in *Watson v. Jones*, and *Presbyterian Church v. Hull, supra.*

On page 34 of their petition the Petitioners state, "Citizens have a right not to have their religious freedom hindered

by the State. They also have the right not to have their civil or secular freedom or rights hindered by the church."

Citizens also have a right to associate themselves with or not associate themselves with a church with a hierarchical polity. But when an association is made with such church, it carries with it obligations and duties not present in a church having a congregational polity.

The Petitioners, despite the utter rejection of their contention by the lower Court, still contend that the Bethel Presbytery and the Presbyterian Church in the United States seek the property of the First Presbyterian Church of Rock Hill. This has never been true and this action has been brought by a group of members of the First Presbyterian Church of Rock Hill who have been recognized as the group constituting such church by the appropriate judicatory or tribunal of the Presbyterian Church in the United States.

Where corporate by-laws expressly and clearly set forth a procedure for determining questions of membership identity by reference to church courts, the decision of the South Carolina Supreme Court recognizing the validity of these by-laws does not raise any federal question of substance not heretofore determined by the United States Supreme Court. See *Watson, supra.*

The Supreme Court of South Carolina, contrary to the Petitioners' assertion, did not bestow upon Bethel Presbytery or the Presbyterian Church in the United States the power to control property of the First Presbyterian Church of Rock Hill. It merely gave recognition to the action of the appropriate church tribunal of the denomination of which the First Presbyterian Church of Rock Hill has always been a part and is still a part.

III. DO THE ISSUES PRESENTED BY THE PETITION REQUIRED DECISION BY THIS COURT TO ASSURE UNIFORM NATIONWIDE APPLICATION OF FIRST AND FOURTEENTH AMENDMENT SAFEGUARDS TO LOCAL CHURCHES AND STATE ELEEMOSYNARY CORPORATIONS?

As their third and final "reason" for requesting the granting of a Writ of Certiorari, the Petitioners assert that guidelines and rules of law established by this Court in *Watson v. Jones, supra,* and *Presbyterian Church v. Hull, supra,* are not sufficiently clear to enable local churches and congregations to protect themselves and their properties. The Petitioners refuse to recognize that a local congregation, incorporated as well as unincorporated, may choose to associate itself with and become a part of a hierarchical or connectional church and may adopt by-laws and constitutions providing for this form of government. This, of course, is precisely what was done by the First Presbyterian Church of Rock Hill and there is nothing unique or unusual or unconstitutional with respect to this arrangement.

In essence the Petitioners are asking the Court to rewrite the by-laws, charter and constitution of the First Presbyterian Church of Rock Hill. They are suggesting that the Court establish a rule of law which would expressly prohibit any religious or eleemosynary corporation from adopting by-laws and constitutions subjecting itself to or becoming an integral part of a hierarchical form of church government.

We believe that this would be contrary to every decision heretofore rendered by this Court and by the Supreme Court of South Carolina relating to the application of the First and Fourteenth Amendments to the Constitution.

In the case at hand, the South Carolina Supreme Court has carefully followed the Constitutional guidelines clearly set forth in *Watson v. Jones, supra* and *Presbyterian Church v. Hull, supra,* and approved in *Maryland and Virginia Eldership v. Church of God at Sharpsburg, supra.* In view of the records before the South Carolina Supreme Court, which

included the by-laws and Constitution of the corporation, that Court properly concluded that:

> . . . Due process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church. There is nothing in the ruling of the lower court, nor in our ruling today, which establishes, sponsors, advances, or supports either the religious belief of the majority or the minority in this case. This Court has traditionally avoided any intrusion upon religious matters and has confined its rulings in such cases to identifying the faction which represents the church after a schism occurred. We have accepted the findings of the appropriate church judicatory as to the matter of identity. In so doing, we apply neutral principles of law referred to in *Hull*.

CONCLUSION

For the foregoing reasons your Respondents respectfully pray that this Honorable Court issue an Order denying the Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

Except from the Book of Church Order of the Presbyterian Church in the United States

Preface

. . .

II. THE CONSTITUTION DEFINED

The Constitution of the Presbyterian Church in the United States consists of its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order, which comprises the form of Government, the Rules of Discipline, and the Directory for Worship.

CERTIFICATE OF SERVICE

In compliance with Paragraph 1 of Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have served the required copies of the Brief of Respondents in Opposition to Petition for Writ of Certiorari on Thomas E. McCutchen, Esquire, of Whaley, McCutchen & Blanton, Attorneys for the Petitioners, by depositing the same in the United States Post Office on the 19th day of September, 1975, with first class postage prepaid, addressed to said Attorney for Petitioners at Post Office Drawer 11268, Columbia, S. C. 29211.

J. D. TODD, JR.